

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOANNE HAIRSTON,)
)
Plaintiff,)
)
v.) 1:06CV00110
)
WAKE FOREST UNIVERSITY BAPTIST)
MEDICAL CENTER, DR. DOUGLAS)
KILGUS, DR. JOSEPH MOLNAR,)
)
Defendant.)

MEMORANDUM OPINION and ORDER

OSTEEN, District Judge

Plaintiff Joanne Hairston, pro se, filed this action against Wake Forest University Baptist Medical Center, Douglas Kilgus, M.D., and Joseph Molnar, M.D. alleging professional malpractice. Defendants have filed a motion to remand and dismiss the case. The court will, however, deny the motion and, sua sponte, dismiss the action upon different grounds.

Though it is not necessary to this opinion, the court first notes that Defendants have filed a motion to remand under 28 U.S.C. § 1447(c). Plaintiff filed this case in federal court; the case was never in state court. This federal court cannot remand a case to a court in which that case was never present. Specifically, 28 U.S.C. § 1447 applies "[i]n any case removed from a State court." (emphasis added).

Defendants also filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(2), (4), (5), and (6). The court finds

the best course of action is to dismiss the action, sua sponte, under Rule 12(b)(1) for lack of subject matter jurisdiction. The court sees no allegations of jurisdiction in the complaint. The court also sees nothing supporting federal question or diversity subject matter jurisdiction. Thus, for this reason, the matter will be dismissed.

For the reasons stated above,

IT IS ORDERED that Defendants' Motion to Remand and to Dismiss [11] is DENIED. The court, sua sponte, dismisses this action for lack of subject matter jurisdiction.

This the 1st day of September 2006.



United States District Judge